Supreme Court of the United States

OCTOBER TERM, 1928

No. 372

R. B. MORRIS, DOING BUSINESS AS MORRIS & LOWTHER, H. M. HEWITT AND LEW SUNAMAKER, ETC., ET AL., APPELLANTS,

vs.

WM. DUBY, H. R. VAN DUZER, AND W. H. MALONE, ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF OF APPELLANTS

W. R. CRAWFORD,
EDWIN O. EWING,
Solicitors for Appellants.

SUBJECT—INDEX

AUTHORITIES CITED

JURISDICTION OF THIS COURT

This action was instituted in the lower court in order to restrain the enforcement of certain provisions of a State law and the acts of the State Highway Commission thereunder in enforcing certain orders reducing the combined weight of trucks and loads and to test the constitutionality of said State law and the said acts of said Commission.

The plaintiffs prayed the protection of the Constitution of the United States, the Federal Legislation granting financial aid to the States in construction of rural post roads, and the contract entered into by the State which divested its jurisdiction over Federal aided highways and vested sole jurisdiction thereof in the Federal Government.

Under the provisions of Section 266, as amended, of the Judicial Code, the lower court, composed of three judges, heard the application for such temporary injunction, and on March 20, 1926, entered an order denying such application, and on same day entered a decree dismissing the amended bill of complaint and also the cause. (P. R. p. 25, 26).

The jurisdiction of this Court is invoked under Section 238, as amended, of the Judicial Code, on the grounds that the provisions of a State law, and the acts of the State Highway Commission thereunder, are in violation of the Constitution of the United States, the Federal Legislation relating to Federal aid highways, and the contract made by the State adopting and agreeing to abide by the provisions of the Federal Highway Act.

The protection of the Federal Constitution and Federal Legislation aiding rural post roads and the con-

tract by the State adopting same was invoked by plaintiffs.

Buck v. Kuykendall, 267 U. S. 307, 69 L. Ed. 623.

STATEMENT OF THE CASE

The plaintiffs instituted this action on behalf of themselves and all the other members of the Auto Freight Transportation Association of Oregon and Washington against the defendants, constituting the Oregon State Highway Commission. (P. R. 1.)

The plaintiff Morris is and has been operating trucks for more than four and one-half years last past carrying freight for compensation from Portland, Oregon, on the Columbia River Highway, to The Dalles, Oregon, and intermediate points, as a common carrier; the other named plaintiffs have and are now operating motor trucks as common carriers on the same highway between Portland, Oregon, to The Dalles and beyond. (P. R. 2.)

As provided by law the plaintiffs had applied for and were granted permits to operate their trucks as common carriers from Portland to The Dalles or beyond, and have paid all the fees required by said Commission in order to so use said trucks as common carriers. Moreover, the plaintiffs filed and adopted tariffs all as provided for in said law. Such tariffs fixed a reasonable, just and remunerative charge for freight carriage and were based upon the then capacity of said motor trucks. (P. R. 2.) That plaintiffs have no power to change such tariff rates without hearing before said Commission and such scheduled rates so filed could not be lowered without confiscating and destroying the property rights and business of the plaintiffs. (P. R. 3.) The plaintiffs were required to and did pay to the State the motor vehicle fees and all other fees so demanded, such fees were based upon, not only the capacity of said trucks, but also the width of the tires thereof; the plaintiffs were compelled to pay the highest fees in said State in or-

der to obtain the right to operate trucks for compensation in said State with the maximum capacity as fixed by the laws of said State, to-wit, 22,000 pounds gross weight of truck and load. (P. R. 3.) Plaintiffs carry freight on said motor trucks from divers points along said Columbia River Highway for delivery as a continuous service between the State of Oregon and other States; that such interstate service has been carried on for years and is constant and efficient and the public demand the continuance of the present rates and service, which service is one made along the highway at the door of the consignee without additional charge. (P. R. 3.) The plaintiffs and other members of said Association have leased and operate a terminal in Portland, Oregon, for the exclusive use of said plaintiffs and members of said Association. Such building was built for said Association at a cost of $285,000.00 Such building occupies 40,000 square feet and is Four stories in heighth on portions of said property. The City of Portland compels all common carriers of freight to install a terminal of this character and such Association was compelled to have such building built and these plaintiffs and all members of said Association have been and are now compelled to share in the expenses of such terminal. Plaintiffs have increased the volume of their business and are now furnishing the public service which is demanded by Public Convience and Necessity. (P. R. 3, 4.)

The defendants are the duly qualified and acting Oregon State Highway Commission. (P. R. 4.)

In 1916 Congress enacted the Rural Post Road Act. The State of Oregon by proper law adopted the provisions of said Federal Legislation in the year 1917, and further in said year by another State law vested

in the State Highway Commission the authority to take such action and perform such duties as may be necessary to meet the requirements of said Federal Legislation; further to designate and authorize the construction of certain hard surfaced highways, post roads and forest roads, and provide for the construction, paving and maintenance of roads and highways. (P. R. 4, 5.) That under the provisions of said law the said Columbia River Highway between the Multnomah County Line Easterly through the city of Hood River and Hood River County was ordered to be permanently constructed and paved. (P. R. 5.)

Thereafter Congress amended such Rural Post Road Act in 1921. (P. R. 6.)

That the State of Oregon has received many hundreds of Thousands of dollars from the Federal Government under the provisions of said Federal Acts and is now receiving yearly hundreds of thousands of dollars. That the portion of the Columbia River Highway, being 22.11 miles in length, between Multnomah County Line and Hood River is a portion of the interstate highway constructed and used from Astoria, Oregon, into the States of Washington and Idaho, and the Federal moneys have been used under the provisions of said Acts for the construction and reconstruction of the said portion of said Columbia River Highway. And further since January 1920 such portion of said highway has been improved and reconstructed by widening such highway and straightening curves therein. All under the provisions and subject to the Federal Highway Acts. (P. R. 6.)

That at the time of the adoption of said Federal Acts by the State of Oregon in the year 1917, the State of Oregon permitted, allowed and encouraged trucks limited to Five Tons capacity to use the high-

ways. That the plaintiffs and members of said Association had constructed their motor trucks for the said Five Tons capacity, and that thereafter the State of Oregon enacted a law for the first time which fixed the load limit of the gross weight of truck and load. (P. R. 6, 7.)

That until the year 1921 the legislature never vested the State Highway Commission and the County Courts with jurisdiction to modify, amend or change any provisions of any law relating to the capacity of any motor truck or the said gross weight of truck and load. (P. R. 7.)

That after the State of Oregon had been receiving and is still receiving moneys from the Federal Government under the provisions of said Rural Post Road Act, as amended in 1921, and after the said Columbia River Highway had been permanently constructed and reconstructed, with the aid of Federal moneys between Astoria, Oregon and The Dalles, Oregon and beyond, the State enacted another law, as amended in 1923, by the provisions of which the State Highway Commission and the County Courts could grant permits to use a highway by vehicles of more than 22,000 pounds combined weight of truck and load upon giving a bond to indemnify the State or County for any damage caused by such vehicles of a gross weight of more than the combined weight of 22,000 pounds of truck and load. Moreover, said Commission and said County Courts were authorized to reduce the legal maximum weights and speed, whenever any public highway is "BEING DAMAGED BY REASON OF BEING SUBJECTED TO ANY PARTICULAR KIND OR CHARACTER OF TRAFFIC * * * AND FOR THE PROTECTION FROM UNDUE DAMAGES OF ANY HIGHWAY OR HIGHWAYS,

OR OF ANY SECTION OR SECTIONS THEREOF, TO REDUCE THE MAXIMUM WEIGHT OR SPEED IN THIS ACT." In said law, as amended, an operator of a motor vehicle is liable for damages to highways. Such law, as amended, prescribes penalties amounting not to exceed a $400.00 fine or imprisonment in a county jail for not to exceed one year, or by both such fine and imprisonment. That said law of 1921, as amended in 1923, fixed the same limit on the combined weight of truck and load as had been in force for some years prior to the year 1921, to-wit 22,000 pounds combined weight of truck and load. Moreover, an additional tax upon the width of tires was exacted and forced the plaintiffs to pay such additional tax in order to operate their trucks with the combined gross weight of truck and load. (P. R. 8.)

After Four years of operation over the said Columbia River Highway, including said portion of said highway involved herein, and after the said passage of said law of 1921, the defendants on the 28th day of August 1925 issued an order reducing the combined maximum weight of truck and load only on that portion of the said Columbia River Highway between Multnomah County Line and Hood River, Oregon. (P. R. 8.)

A copy of such order is made a part hereof and attached hereto, Exhibit "A".

That such order was to take effect on and after October 1st, 1925. (P. R. 9.)

That the defendant issued such order without notice to plaintiffs or any other person, firm or corporation interested and no evidence was considered and no opportunity was ever given to plaintiffs or any other person, firm or corporation interested to present

any evidence in connection with such order, but said order was issued ex parte on the said defendant's own motion. (P. R. 9.)

That the plaintiffs and other members of said Association were forced to and had purchased motor trucks constructed for the purpose of carrying the said combined weight of truck and load, to-wit, 22,000 pounds; that the weight of said motor trucks without load vary from 10,500 pound to 12,000 pounds; that the load capacity of said trucks varied from 10,000 pounds to 11,500 pounds; the schedule of rates as filed and had been in force from Portland, Oregon, and to and through The Dalles, and such rates had been fixed and were fixed and determined by the combined weight of truck and load, to-wit, 22,000 pounds; that the said Columbia River Highway, as aforesaid, from Portland to The Dalles is adjacent and parallel to an existing and operating railway serving such territory; also steamboats operating on the Columbia River are in competition with these plaintiffs; the rates of such other common carriers were considered in the fixing of the rates by these plaintiffs; the plaintiffs must apply to the Public Service Commission to CHANGE SUCH RATES AND MUST SHOW THAT any additional increase of rates over the present tariff would be reasonable and just, and in order to operate their trucks on such portion of said Columbia River Highway, the plaintiffs must charge and collect a rate which will practically double the rate now charged; and would destroy the interstate business which has been developed between the States of Oregon, Washington and Idaho; further any such increase of rates would destroy any competition now existing along the said Columbia River Highway, as aforesaid; further the said Public Service Commission would not sanction such increase of rates by the said plaintiffs, as

now filed, as such additional increase would be unreasonable and unjust to the public. (P. R. 9, 10.)

That the portion of said Columbia River Highway from Portland to the East line of Multnomah County, was constructed and hardsurfaced by pavement approximately Eleven Years ago, while the portion of said Highway West of the said Multnomah Line to The Dalles, including the portion in controversy herein was constructed and hardsurfaced by paving about Five Years ago. (P. R. 10.)

That the portion of said Columbia River Highway from Portland to The Dalles was constructed and reconstructed, after the adoption of the said Federal Highway Act in the year 1917, under the direction and control of the State Highway Commission as required under the provisions of the said Federal Highway Act. (P. R. 10.)

That after the year 1917 and prior thereto, motor trucks of the same size, weight and carrying capacity, to-wit, a combined weight of truck and load of 22,000 pounds were and have been operated over said highway from Portland to The Dalles and beyond. That said Columbia River Highway, and especially that portion of the same as set out in the said order herein, was constructed and reconstructed under the provisions of said Federal Highway Act for the purpose of taking care of not only the then traffic on such highway, but also to take care of the future traffic thereon. (P. R. 10.)

That in the year 1920, after the said construction and reconstruction of said highway, Four trucks carrying freight were operated with the combined weight of truck and load of 22,000 pounds and since that time the number of such capacity trucks have been increased until in the year 1925 Nine trucks were

operating on such highway between Portland and The Dalles and beyond that in 1925 other motor vehicles on such highway had increased in number to an average daily of 1500 cars and motor trucks, called motor busses, carrying passengers for compensation on said highway between said points were more in number than said Nine trucks and weigh with bus and load approximately 16,000 pounds; all of such motor busses, as well as other motor vehicles except trucks, operate at the maximum speed of 30 miles per hour. (P. R. 9, 10.)

That the said Exhibit "A" as aforesaid, being the said order of said Commission, recites that the said portion of said highway in controversy is being damaged and injured on account of the kind and character of traffic now being hauled thereon, and by reason of the fact that loads of the maximum gross weight moved at the maximum speed specified in the law are breaking up, damaging and deteriorating the said highway, and the Commission orders not only that the combined weight of truck and load should be reduced from 22,000 pounds to 16,500 pounds, and but that the maximum weight of 600 pounds per inch for tires having a width in excess of 30 inches shall be reduced to 450 pounds per inch of tire width, and that the maximum allowable load for tires having a width of less than 30 inches shall be reduced from 500 pounds to 375 pounds per inch width of tires. It permits only vehicles with a combined weight of load and vehicle of less than 16,500 pounds, and vehicles having a total tire width of less than 30 inches limited to the weight on one axle by multiplying the sum of the tire width of the two wheels on such axle by 375 pounds; and further vehicles having a total tire width of 30 inches or more limited to the weight at contact on the highway with the tread of the two wheels

of any one axle by multiplying the sum of the tire width of the said two wheels of 450 pounds. (P. R. 16, 17.)

Said order provides "that these rules and regulations as made and found by the State Highway Commission under the provisions" of the state law of 1921, as amended, "shall be in force and effect from and after October 1, 1925, until revoked or modified by the State Highway Commission." (P. R. 17.)

The plaintiffs deny the statements contained in such order that the said Nine motor trucks limited to combined weight of truck and load of 22,000 pounds and the speed of 12 miles per hour, are damaging and destroying the said portion of said highway in controversy; the plaintiffs aver that said portion of said highway is in as good a condition as it has been for years and has never been and is not now being damaged or destroyed as set forth in said order, by either the operation of said motor trucks or the said motor busses or said automobiles, further plaintiffs aver that all the other portions of said Columbia River Highway between Portland and The Dalles are in the same good condition and are not and have not been damaged and destroyed by the operation of all the said motor vehicles. (P. R. 11.)

That on information and belief the plaintiffs aver that the defendants admit that said order so made was not based upon either the present or past damage or destruction of said portion of said highway, but solely upon a fear that the said Nine motor trucks might in the future so damage and destroy said portion of said highway, and also it is admitted that said portion of said highway was in first class condition and repair, as well as the other said portions of said highway. (P. R. 11, 12.)

Further on information and belief the plaintiffs aver that the defendants have issued a blanket order covering portions of Fourteen other Federal aided highways limiting the use of motor trucks by reducing the said combined weight from 22,000 pounds to 16,500 pounds, and that such plaintiffs' operation on such portion of said Highway furnishes competition with railroad companies owning and operating railroad lines carrying freight thereon. (P. R. 12.)

The plaintiffs on information and belief aver that the entire cost for a year prior to the issuance of said order for the maintenance and repair of said portion of said highway in controversy did not exceed the sum of $5,000. (P. R. 12.)

The plaintiffs are willing and able to and will indemnify the defendants by furnishing a good and sufficient bond to pay all damages which they may cause to said portions of said highway in controversy by reason of their motor trucks operating with the combined weight of 22,000 pounds for truck and load, as provided for in the said State Law. (P. R. 12.)

It is alleged that the defendants' actions under the provisions of said sections of the said State laws are arbitrary and unreasonable and are not based upon any hearing, and are contrary to the true facts; that such order discriminates against these plaintiffs and destroys their business and property, as well as prevents the public from enjoying the benefits derived from said operation of said trucks at rates which are now reasonable and just; that such order effects and burdens interstate commerce; and is contrary to and in contravention of the "Federal Highway Act" and the Constitution of the United States, especially the 14th Amendment thereof; it destroys competition; it enables the owners of private automobiles, motor bus-

ses and motor trucks of small capacity to monopolize and use the said Federal aided highway contrary to and in defiance of the said "Federal Highway Act" and the contract made by the said State of Oregon. (P. R. 12, 13.)

The plaintiffs, as well as all other members of said Association, pray the protection of the commerce clause of the Constitution of the United States, the Constitution of the United States and the 14th Amendment thereof, as well as of the contract entered into between the said State of Oregon and the Federal Government, and also the provisions of said "Federal Highway Act", also against the said illegal acts of the said defendants, acting under the provisions of the said sections 35 and 36 of the said laws of 1921 and section 36A of the Law of 1923, on the grounds and for the reasons that the same are contrary to and in contravention of the Constitution of the United States, especially the Commerce Clause thereof and the 14th Amendment thereof, as well as of the contract entered into between the said State of Oregon and the Federal Government, and as well as the provisions of the said "Federal Highway Act". (P. R. 13.)

The plaintiffs and all other members of the Association will be arrested daily in the conduct of their business, if their motor trucks exceed the said combined weight of 16,500 pounds, and will be forced and compelled, either to discontinue their business or to reduce the said combined weight, as fixed by the law at 22,000 pounds, to the combined weight of 16,500 pounds, as provided for in said order, all of which would deprive these plaintiffs of their rights to engage in their said operation of their said motor trucks carrying freight for compensation on the said Fed-

eral aided highway, as well as preventing interstate commerce and would destroy the use of their said motor trucks on said portion of said highway for which privilege the said plaintiffs have paid all fees and charges and the premises considered the plaintiffs will sustain large, heavy irrepairable loss, damage and injury, unless given protection by injunction, and the plaintiffs have no plain, speedy and adequate remedy at law. (P. R. 13, 14.)

The matters involved in this controversy exceed in value the sum of $3,000.00 exclusive of interest and costs. (P. R. 14.)

The plaintiffs pray that a temporary injunction should be issued restraining the defendants from interfering with the operation of plaintiffs' trucks on such portion of such highway operating their trucks with the combined weight of truck and load to-wit, 22,000 pounds, until a final hearing and determination and that a permanent injunction issue enjoining the enforcement of the said order in controversy as being void and unconstitutional, and for other, further and proper relief as may be just and equitable in the premises, including costs and disbursements herein. Further the plaintiffs show that the constitutionality of the State Statute and the enforcement thereof by the defendants is sought to be enjoined and they pray that such application for a temporary injunction should be heard before a court consisting of Three Judges, one of such Judges to be a Circuit Judge. (P. R. 14, 15.)

The defendants filed a motion to dismiss the amended bill of complaint on the sole ground that the facts were not sufficient to constitute a cause of action against the defendants or to entitle the plaintiffs to the relief demanded. (P. R. 17, 18.)

Said application for a temporary injunction was heard and the Court denied said application for such temporary injunction and at the same time, the amended bill of complaint was dismissed and the plaintiffs had refused to plead further, the decree dismissing the cause was entered. (P. R. 24, 25, 26.)

SPECIFICATIONS OF ERRORS

I.

The Court erred in refusing to grant the temporary injunction prayed for.

II.

The Court erred in dismissing the amended bill of complaint.

III.

The Court erred in dismissing the cause of action.

IV.

The said order denying application for temporary injunction and sustaining the motion to dismiss the amended bill of complaint, and the decree dismissing the cause of action are erroneous in these particulars:

A. That plaintiffs' constitutional rights under the contract between the Federal Government and the State of Washington, evidenced by the "Federal Highway Act" and adoption thereof by the State, were not protected.

B. In deciding that the provisions contained in Sections 35, 36 and 36A of the State Law of 1921, as amended in 1923, giving the County Courts and State Highway Commission power to limit the capacity of trucks or limit the speed, are constitutional and not contrary to the Federal Constitution, the Federal Legislation, relating to federal aided highways, which the State had duly adopted.

C. In deciding that the order of said State Highway Commission issued under the said provisions of said law, reducing the maximum weight of truck and load from 22,000 pounds to 16,500 pounds, was constitutional, and did not offend the Federal

Constitution, the Federal Highway and the adoption of the provisions of the said "Federal Highway Act" by the State.

D. In deciding that the State directly or through the County Courts or the State Highway Commission have the sole jurisdiction and power to promulgate and enforce rules and regulations, relating to the conservation and preservation of federal aided highways or the safety of traffic thereon.

E. In deciding that the State Highway Commission had the jurisdiction and power to restrict the use of federal aided highways by trucks carrying a combined weight of truck and load in excess of 16,500 pounds without notice or hearing to the owners and operators of such trucks and that the said order was constitutional and not contrary to the Federal Constitution, and the Federal Aid Legislation, as adopted by the State.

F. In deciding interstate commerce was not burdened.

G. In deciding that such order was issued and enforced upon the sole reason of emergency, while the admitted facts show no emergency existed.

H. In deciding that such order did not foster and create a monopoly in favor of railroad companies and steamboat companies, while the admitted facts show that the only grounds for issuing and enforcing such order were to destroy the competition of motor trucks for the benefit of such railroad companys and steamboat companys—not only in intrastate commerce, but also in interstate commerce.

I. In deciding that such order did not irreparably damage and injure the business of said owners and operators of said trucks, contrary to the Federal Constitution, the Federal Highway Act and contract of the State which adopted and agreed

to abide by all the provisions of said Federal Aid Legislation, as well as the State legislation relating to fees and the Public Service Commission.

J. In deciding that such order was reasonable and not arbitrary.

K. In refusing the application for the temporary injunction, although the admitted facts showed that the plaintiffs below, appellants herein offered to safeguard any damage that might arise from operating trucks under the same weight limit which had been fixed for 10 years and was the limit in 1916 when said Post Rural Act had been enacted by Congess, and under which the federal aided highways had been and were now being constructed and reconstructed.

SUMMARY

This matter comes to this Court on appeal from the District Court of the United States of the District of Oregon.

The lower Court, composed of Three Judges, as provided for by Section 266 of the Judicial Code, as amended, denied the application of the plaintiffs below for a temporary injunction, and dismissed the amended bill of complaint, and dismissed the cause of action.

The lower Court filed a written opinion (P. R. 23, 24), and referred to and made a part of such opinion the prior written opinion of the same Court upon the application for a temporary injunction based upon the original bill of complaint. (P. R. 18, 23.)

In support of the order and decree entered in the Court below the following argument is made:

That the Federal Highway Act, adopted by the State of Oregon, protects the plaintiffs' rights and privileges depending upon such joint and concurrent legislation whenever the same are trenched upon; but that the action of the State, as it did in 1921, fixing the maximum load weight of trucks used upon the highways at 22,000 pounds is not and does not constitute a part of that concurrent legislation. It does not relate to any matter within the purview of the joint and concurrent legislation of Congress and the State respecting the construction and maintenance of rural post roads. There is no constitutional or legal reason why the State Legislature might not in 1921 have fixed the maximum truck load less than 22,000 pounds, so that it did not make it so low as practically to rule trucks off the highway, which would raise a legislative question involving discretion

touching the reasonableness of the provisions of the act. Legislation empowered the State Highway Commission in cases of emergency to reduce the carrying weight of trucks until the emergency was relieved again. This is all the commission attempted and is attempting to do in the present case. The order of the commission is temporary, not permanent, it reading "until revoked or modified." The States are compelled to maintain roads constructed in their States; failure so to do vests the Secretary of Agriculture upon proper notice to proceed immediately to place said highways in proper condition. If highways fall into decay or disorder, then the same should be protected until repaired or reconstructed. There is no merit in the contention of the plaintiffs that the order issued by the Highway Commission was entered without notice. The public is not entitled to such notice. The State has paramount control over the use of the highways within its border, and it may enact and enforce reasonable regulations governing traffic over them, necessary to secure their preservation and maintenance, and the public safety. (13 R. C. L. Sec. 212; Grand Trunk Western Ry. v. South Bend, 227 U. S. 544). The highways of the State are open to intrastate and interstate commerce alike, and the state cannot, under the guise of legislation deny one engaged in interstate commerce the use of its highways. (Buck v Kuykendall, 267 U. S. 307). The State may rightfully prescribe uniform regulation to promote safety upon its highways and the conservation of their use, applicable alike to all vehicles, moving in interstate or intrastate, in the absence of national legislation covering such subject. (Kendrick v Maryland, 235 U. S. 610; Kane v New Jersey, 242 U. S. 160). The order of the highway commission is not a discrimination against interstate commerce and

does deny such operators of the equal protection of the law.

The fallacy of the above argument is apparent. An examination of the provisions of the Federal Legislation adopted by the State, as set out in the appendix hereto, discloses that the Federal Government had taken sole jurisdiction of federal aided highways for certain purposes, and the State legislation enacted in 1921, as amended in 1923, as well as the order of the State Highway Commission made in the fall of 1925, are prohibited by such Federal Legislation, which vests the Secretary of Agriculture with sole and exclusive jurisdiction to promulgate the rules and regulations for the conservation of such federal aided highways and the safety of traffic thereon.

Moreover, all the allegations of the amended bill of complaint are admitted by the motion to dismiss and all the admitted facts disprove the statements upon which said argument rests. The admitted facts show that there is no emergency but such portion of said federal aided highway is in proper condition of maintenance and repair; that the order was not to prevent such operation of such character of traffic for the purpose of repairing such highway, but for the sole purpose of making a permanent reduction of the carrying capacity of said trucks; no mention is made in such argument that the admitted facts show that such order was made for the purpose of destroying the competition of not only such trucks operating on this portion of said highways, but other trucks operating on portions of other 14 federal aided highways, with railroad lines and steamboat lines; no mention in such argument that the plaintiffs were able to and offered to give proper bond in any amount fixed by the court to safeguard against any damage

done by such operation; it is admitted that the plaintiffs, appellants herein, have been and will daily suffer irreparable damage and loss, not only in their intrastate business, but also in their interstate business.

That the plaintiffs, appellants herein, prayed the protection of the Constitution of the United States, the Federal Legislation, relating to financial aid to States, and the contract which the States adopted and under the provisions of such Federal Legislation, the State has had millions of dollars and is now receiving financial aid from the Federal Government.

ARGUMENT

I.

THE UNITED STATES HAD BEEN VESTED WITH THE SOLE JURISDICTION OVER FEDERAL AIDED HIGHWAYS BY THE LAW ENACTED BY THE STATE IN THE YEAR 1917. AND THE STATE HAD AGREED TO SURRENDER SUCH JURISDICTION TO THE UNITED STATES AND HAS AND IS NOW RECEIVING THE FINANCIAL BENEFITS OF SUCH FEDERAL LEGISLATION.

The portions of such Federal legislation set out in appendix show conclusively that Congress did not intend that the millions and millions of dollars of government moneys should be apportioned to the different States without safeguarding the construction, reconstruction, maintenance of such highways and the safety of traffic thereon.

Congress had prior to the year 1916 been continually harrassed and embarassed by its failure to retain the sole jurisdiction over internal improvements subsidized by the Federal Government.

We refer to a few cases in point.

After the government had ceded to Maryland, Pennsylvania, Ohio and Indiana, the Cumberland Road which had been constructed by the Government under the one consideration, namely, that no tolls could be exacted for the use of stage and coaches carrying mails, and etc., the States of Maryland, Pennsylvania and Ohio by legislative acts endeavored to evade and cancel that one consideration and it was necessary to appeal to the Courts for protection. The Supreme

Court of the United States declared that such State laws were in violation of such contract and the individual operators of such stage coaches were entitled to use such highway carrying United States mail as well as passengers without the exaction of any tolls.

Searight vs. Stokes et al., 3 How. 151, 11 L. ed. 537.

Neil, Moore & Co., v. Ohio, 3 How. 720, 11 L. ed. 800.

Achison v. Hudleson, 12 How. 291, 13 L. ed. 993.

The State of Indiana endeavored to recover moneys which it claimed the Government owed it by reason of the building of such highway out of the sales of the Government's public lands, and the Government was compelled to resist such suit and was successful.

State of Indiana v. U. S., 148 U. S. 148, 37 L. ed. 401.

Congress in 1864 granted the State of Oregon aid in the construction of a military road from Eugene City to the Eastern boundary of the State under certain conditions, viz: "That said road shall be constructed with such width, graduation, and bridges as to permit of its regular use as a wagon road, and in such other special manner as the state of Oregon may prescribe"; further in Sec. 4, it was provided "and when the governor of such state shall certify to the Secretary of Interior that any ten continuous miles of said road are completed," * * *. The state was only authorized to sell the granted land only as the construction had progressed. There was no provision compelling the state to maintain such military

road in good condition and as the Supreme Court said: "Having earned the grant by constructing the road, it may well be that the road company took no further interest in it," * * *.

U. S. v. California & Oregon Land Co., 148 U. S. 31, 37 L. ed. 354, 356, 362.

In 1867 Congress granted to the State of Oregon certain public lands to aid in the construction of a military wagon road from Dalles City, on the Columbia River Easterly to the Idaho line opposite Fort Boise; that such public land should not be disposed of by the state except for such purpose; "That the said road should be and remain a public highway for the use of the government of the United States, free from tolls or other charges upon the transportation of any property, troops or mails of the United States, and the said road should be constructed with such width, gradation and bridges as to permit of its regular use as a wagon road," * * *. The United States endeavored to recover some of the lands granted to the state and sold by it on the ground of the fraud of the Governor.

U. S. v. Dalles Military Road Co., 140 U. S. 599, 35 L. ed. 561, 562.

After the enactment of the Telegraph Act the state of Florida tried by legislative act to prevent the exercise of the rights of a telegraph company under the Act of Congess and the Supreme Court declared such legislation of said State unconstitutional.

Pensacola Tel. Co. v. W. U. Tel. Co., 96 U. S. 1, 24 L. ed. 708.

The Supreme Court declared an act of the State of Idaho unconstitutional which created a monopoly

on the public highway in such State which had been granted government aid.

> *U. S. v. Union Pacific R. Co.*, 160 U. S. 1, 40 L. ed. 319.

The United States Supreme Court construed the contract entered into between the United States and a Railroad, under which the government donated public lands to the railroad to aid in its construction in consideration that the United States could have the use of the road "free from all tolls or other charge for transportation of any property or troops of the United States."

> *Lake Superior Etc., R. R. Co. v. U. S.*, 93 U. S. 442, 23 L. ed. 965.

The attempts of railroads to evade their contracts with the government based upon land grants, is illustrated by the following cases:

> *Grand Trunk Western R. Co. v. U. S.*, 252 U. S. 112; 64 L. ed.

Also:

> *Wisconsin Central R. Co. v. U. S.*, 164 U. S. 190; 41 L. ed. 399.

The same situation arose in grants by the United States for construction of canals.

Mr. Justice Peckham in delivering the opinion of the court said:

> "Defendant refers to certain grants of land made to Illinois, Indiana, and Ohio, and perhaps to some other states, where such grants were made to aid in the construction of canals in those

states, and where possible profits from the construction of such canals were within the contemplation of the various grants. But in the acts referred to there are no restrictions upon the tolls which the states may charge for the use of their respective canals, the only limitation imposed being that the government should have their free use for the passage of its vessels; while, in this act the tolls which the state may charge are to be only such after the payment for its construction, etc., as should be sufficient to pay the necessary expenses for the care, charge, and repairs thereof.

The state of Michigan, through an Act of the legislature, duly accepted the terms of the Act of Congress, and agreed to carry out all the conditions therein made obligatory upon that state. An attentive reading of that statute shows its purpose to conform to all of the provisions of the Federal statute. * * *.

If any particular part of the statute in this case were ambiguous or its meaning doubtful, of course the intention must be deduced from the whole statute and every part of it. Hence the importance of those provisions which, in effect, if carried out, prevent the state from making any direct profit by the construction of the canal, or from the tolls received from vessels passing through it. And, where words are ambigous legislative grants must be interpreted most strongly against the grantee and for the government, and are not to be extended by implication in favor of the grantee beyond the natural and obvious meaning of the words employed. Any ambiguity must operate against the grantee and in favor of the public. Rice v. Minnesota & N. W. R. Co. 1 Black, 380, 17 L. ed. 154. This rule of construction obtains in grants from the United States to States or corporations in the aid of the construction of public works."

In such Act of Congress there were certain duties imposed upon the States and the Secretary of the Interior was delegated to take charge of all of the matters involved in such contracts. There was no intention that the State would reap profit out of this grant by the government, but the State was to profit from the construction of such internal improvements wholly within the State by the completion and operation of such canal.

U. S. v. Michigan, 190 U. S. 377, 399, 400, 401; 47 L. ed. 1103, 1110, 1111.

When the State adopted and agreed to abide by all of the provisions of such Federal legislation and has and is now receiving financial benefits therefrom, such State is estopped from in any way contesting the sole jurisdiction and authority contained in the said provisions of said Federal legislation.

The State cannot exact toll of any kind.

No project can be initiated except under the approval of the Secretary of Agriculture.

And no moneys can be paid over to the State until after the Secretary of Agriculture has issued proper approval of the construction and reconstruction of any Federal Aided Highway.

The State must comply with the provisions of the Federal legislation which forces the construction or reconstruction with proper material and types of surface so as to make such highway permanent and of such strength and width required to adequately take care not only of the present traffic, but also for the probable future traffic.

It is the duty of the Secretary of Agriculture to carry out the provisions of such Federal legislation

and certify that such highway so constructed or reconstructed is built with such types of surface and material so as to give sufficient strength and width to adequately take care of not only the present traffic, but also the probable future traffic.

It is the duty of the State to keep such highways in proper condition of maintenance, and if it fails to do so, then the Secretary of Agriculture, after due notice and finding that such highway has not been put in proper condition, and it is the duty of the Secretary of Agriculture to put such highway in proper condition of maintenance and use the allotment of such state for such purpose.

The Secretary of Agriculture is vested with the sole jurisdiction and authority to issue all needful rules and regulations for the carrying out of all the provisions of this act, and is vested with the sole jurisdiction to preserve and protect the highways and insure the safety of traffic thereon.

The amendment of 1922 strengthens the provisions of such legislation by the insertion of penalties, so that any one convicted with intent to defraud the United States in any matter relating to the construction, reconstruction, in maintenance etc., shall be punished by imprisonment not to exceed five years or by a fine not to exceed $10,000.00, or by both fine and imprisonment within said limits.

A study of the above cases and the provisions of the Federal Legislation, adopted by the State, shows conclusively that Congress intended to and did take over the sole jurisdiction, supervision and regulation of such highways and empowered and directed the Secretary of Agriculture to carry out the provisions of such Federal Legislation.

We submit that the United States has the sole jurisdiction over the construction, reconstruction, types of surface, the material used, the width and strength of pavement and the operation of traffic thereon, and the State has lost the power to exact tolls of any kind for the use of such highways and to enact and enforce any law relating to the construction, reconstruction, types of surface, the material used, the width and strength of pavement and to designate the capacity of motor trucks or to interfere in any way with traffic on such highways.

II.

THE PROVISIONS, SEC. 35 AND 36, OF THE STATE LAW ENACTED IN 1921, AS AMENDED IN 1923 AND THE ACTS OF THE STATE HIGHWAY COMMISSION THEREUNDER IN REDUCING THE CAPACITY OF CERTAIN MOTOR TRUCKS, ARE UNCONSTITUTIONAL AND VOID, BEING IN CONTRAVENTION TO AND IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES, THE "FEDERAL HIGHWAY ACT" AND OF ALL THE PROVISIONS OF SAID "FEDERAL HIGHWAY ACT" ADOPTED BY THE STATE IN 1917.

The said State law enacted in 1921, as amended in 1923, (appendix page 67) granted power to County Judges and the State Highway Commission to reduce the capacity of trucks and under which law the State Highway Commission on August 28, 1925, issued an order reducing the capacity of said trucks from 22,000 pounds to 16,500 pounds. (P. R. p. 15, 16.)

It is admitted that the Secretary of Agriculture had not in any ordered, directed or commanded said State Highway Commission to make such order, but it acted on its own violition and thereby obstructed, interfered with and destroyed this character of traffic, namely, trucks built for the carriage of freight with this legal capacity which limit had been fixed for more than 10 years last past and for which character of traffic the said highway in controversy had been constructed and reconstructed. (P. R. p. 6, 10, 20.)

When the State by legislative Act did adopt the provisions of said Federal Legislation and agreed to abide by all of the said provisions, it transferred all of its powers in that respect to the Federal Government.

The "FEDERAL HIGHWAY ACT" provided that the entire jurisdiction over Federal aided highways was to be vested in the Federal Government and gave the power and authority to the Secretary of Agriculture to carry out the provisions of such Act.

The Secretary of Agriculture has the only power to take steps to conserve and preserve such highways and insure the safety of traffic thereon, and the enactment of the said provisions of this law of 1921, as amended in 1923, and the acts of the State Highway Commission in issuing and enforcing such order, were directly in violation and contrary to the agreement made by said State in the adoption of said provisions of said law in the year 1917. (Appendix page 61).

The order issued by the State Highway Commission discloses that the very language used in the provisions of the said "Federal Highway Act," to-wit, "rules and regulations" were adopted by the State Highway Commission under the provisions of the

law of 1921, as amended in 1923. (P. R. p. 17.) In other words the State, indirectly through the State Highway Commission, is exercising jurisdiction and is interfering with the carrying out of the provisions of the said "Federal Highway Act" by the Secretary of Agriculture.

The lower Court decided that these plaintiffs, appellants herein, had a "legal status from which the states can neither withdraw nor alter, modify or qualify, ...," whenever "their rights and privileges depending upon such joint and concurrent legislation, are trenched upon." But the Court said that the reduction of such combined weight of 22,000 pounds to 16,500 pounds did not constitute "a part of that concurrent legislation" ..... Again in the opinion it is said that such provisions of said State law of 1921 is a subject embraced by the title. "It does not relate to any matter within the purview of the joint and concurrent legislation of Congress and the state respecting the construction and maintenance of rural post roads." (P. R. p. 21, 22.)

The Supreme Court of the United States speaking by Mr. Justice Brewer said:

> "Concurrent jurisdiction, properly so-called, on rivers, is familiar to our legislation, and means the jurisdiction of two powers over one and the same place."
>
> *Neilsen v. Oregon,* 212 U. S. 315, 319, 53 L. ed. 528, 529.

We are not able to subscribe to the statement that the Federal Government and the State have joint and concurrent jurisdiction, as the provisions of the "Federal Highway Act" as adopted by the State have taken away any jurisdiction from the State over this subject, namely the interference of traffic on Federal

aided highways by reducing the capacity of motor trucks when the Federal Government had determined in the "Federal Highway Act" (appendix page 44) that such highways should be constructed or reconstructed with sufficient width and strength, and types of surface and material, sufficient to adequately take care of the needs of the then traffic as well as probable future traffic and the Secretary has sole jurisdiction to make "rules and regulations" conserving such highways and insuring the safety thereon. It is admitted that the said highways had been for many years used by trucks with the capacity of 5 tons, and by such character of traffic.

A legislative Act, declaring that certain lands which should be purchased for the Indians, should not, thereafter, be subject to any tax, constituted a contract, which could not be rescinded by a subsequent legislative act; such repealing act being void under that clause of the constitution of the United States which prohibits a state from passing any law impairing the obligation of contracts.

> *State of New Jersey v. Wilson,* 7 Cranch. 165, 3 Ld. ed. 303.

Also:

> *Buck v. Kuykendall,* 267 U. S. 307, 69 L. ed. 301.

We refer to the decisions on this question cited under paragraph 1 of this argument.

We submit that said provisions of said State law and the acts of said State Highway Commission are unconstitutional, void and violate the provisions of the Constitution of the United States, the Federal Highway Act and the adoption of the provisions thereof by the legislative Act of the State.

III.

THE ORDER OF THE STATE HIGHWAY COMMISSION BURDENS INTERSTATE COMMERCE AND IS UNCONSTITUTIONAL.

It is admitted that the appellants were engaged in transporting freight between Portland, Oregon and the States of Washington and Idaho for compensation, and that they had been so engaged in such business for many years, using the Federal aided highway from Portland to The Dalles and beyond; and that such appellants had at large expense constructed trucks in order to carry the largest capacity of freight that had been considered for years as the limit capacity. They had paid the largest fees in the State for carrying such capacity; also had obtained permits from the Public Service Commission of the State and as required they had filed their tariffs, which tariffs were just and reasonable and were determined by the said capacity loads, and no tariff could be accepted by said Public Service Commission carrying a charge approximately 100% in excess of the rates now on file; such appellants had been compelled to join with others in the construction and maintenance of a terminal at Portland, Oregon at an expense of many thousands of dollars. Such order, which was made on August 28, 1925, went into force on October 1, 1925, would compel the appellants to cut down their capacity 50%; while such order only covered 22:11 miles from the East Line of Multnomah County Line to Hood River, yet the effect of such order is to cut down the capacity on said Columbia River Highway from Portland to The Dalles and beyond; the appellants are carriers of food products and collect and deliver the same from producer to consumer and deliver to producers articles

necessary in the production of such food products. (The Government in 1919 appropriated $300,000.00 to the Postmaster General in order to experiment with motor trucks so as to cheapen the cost of food products from producer to consumer. (Appendix page 48); such order has irreparably damaged and injured the appellants and their business and has and will burden interstate commerce and destroy their rights and privileges obtained from the said Public Service Commission; such order is a burden on interstate commerce and is contrary to and in violation of the Constitution of the United States and the Federal Highway Act, and the contract of the State in adopting all of the provisions of such Federal Highway Act.

This order has the direct result of effecting the just and reasonable charges on such interstate business, by destroying the present tariffs and doubling the cost of such freight charges, even if the Public Service Commission would find that such increase would be just and reasonable, but such Commission has declared that it would not countenance such increased charges. If the State had directly fixed the present tariff and reduced the same 50% on said interstate business, the appellants would be entitled to an injunction and a decree after final hearing on the ground that such exaction would have been contrary to and in violation of the Constitution of the United States as being arbitrary, unreasonable and confiscatory. We consider that such order has the same effect.

Railroad Commission cases, 116 U. S. 307, 29 L. ed. 636;

Chicago M. & St. P. R. Co. v. Minnesota, 134 U. S. 418, 33 L. ed. 970;

Reagan v. Farmers' Loan & T. Co., 154 U. S. 362, 38 L. ed. 1014;

St. Louis & S. F. R. Co. v. Gill, 156 U. S. 649, 39 L. ed. 567;

Buck v. Kuykendall, 267 U. S. 307, 69 L. ed. 301.

We call the Court's attention to the citations under paragraph 1 in this argument.

SUCH ORDER OF SAID STATE HIGHWAY COMMISSION AND THE ENFORCEMENT THEREOF WERE ARBITRARY, UNREASONABLE, VOID, AND UNCONSTITUTIONAL, AND CREATED A MONOPOLY IN FAVOR OF OTHER COMMON CARRIERS IN COMPETITION WITH THE TRUCKS OF SAID APPELLANTS.

The admitted facts show that there was absolutely no occasion to make such order, as the said portion of said Columbia River Highway was in as good a condition as it had been for years and it had not been and is not being damaged or destroyed by the operation of Nine motor trucks carrying freight with a combined weight of truck and load of 22,000 pounds. (P. R. p. 11.)

Furthermore it is admitted that the said State Highway Commission did not issue said order based upon the present or past damage or destruction of said portion of said highway, but upon a fear that in some future day such Nine motor trucks might so damage and destroy said portion of said Columbia River Highway, and although said portion of said

highway was in first class condition and repair as well as the other said portions of said highway. (P. R. p. 11, 12.)

That said State Highway Commission had issued a blanket order covering 14 other Federal aided highways or portions of the same, and attempted to reduce the said combined weight of truck and load from 22,000 pounds to 16,500 pounds. (P. R. p. 12.)

When the said portion of said Columbia River Highway was constructed and reconstructed there were four trucks operated thereon with the largest legal capacity, and the portion of said Columbia River Highway West from the East Line of Multnomah County had been constructed and reconstructed many years prior to the portion in controversy and used by said trucks with such capacity for many years. (P. R. p. 10, 11.)

In the year 1917 the State enacted a certain law which provided that this said portion of said Columbia River Highway between the East Line of Multnomah County through the City of Hood River, and through The Dalles on to the Idaho Line should be paved with hard surface paving, and that such highway should be permanently constructed and so finished by hard surfacing the same, and that such portion from the said East Multnomah Line through Hood River City through The Dalles to the Idaho State Line was constructed in a permanent manner by hard surfacing by paving, about Five years ago. (P. R. p. 10.)

That under the provisions of the "Federal Highway Act" the Secretary of Agriculture had approved such portion of said highway, declaring that said highway had been permanently constructed by a

proper type of surface and with proper materials so as to take care of not only the then traffic, but the probable increase of traffic thereon.

The Court must presume that the Secretary of Agriculture had carried out the provisions of said "Federal Highway Act" and that the State in constructing and reconstructing said portion of said highway had through its State Highway Commission complied with not only the "Federal Highway Act", but also the commands contained in the said State law. (Appendix page 44).

We are therefore surprised to find that that portion of said highway 22:11 miles in length constructed and reconstructed a few years ago, has been damaged and destroyed by the addition of Five trucks operating as the additional traffic on such portion of said highway, although adjacent portions of the Columbia River Highway constructed and used many years prior are not included in such order. If the Federal and State authorities have exercised their duties, there could be no reasonable justification of such order of said State Highway Commission, and as such highway is in proper maintenance and repair, as admitted by the motion to dismiss the amended bill of complaint, we must conclude that the order of the State Highway Commission which destroyed the operation of trucks carrying the combined weight of truck and load of 22,000 pounds, and the order of same effect regarding the 14 other Federal aided highways, parallel to railroad lines, were made for the sole purpose of destroying the competition by such trucks with the railroad line and steamboat line parallel to the Columbia River Highway and with the railroad lines parallel to the other 14 Federal aided highways. (P. R. p. 9, 10, 12.)

Either the State Highway Commission has, itself or other persons have combined with it, to defraud the United States in the construction or reconstruction of said portion of said Columbia River Highway (see penalty clause in appendix p. 74) or else the acts of said commission are arbitrary and unreasonable.

Cincinnati, N. O. & T. R. Co. v. Rankin, 241 U. S. 319, 60 L. ed. 1022.

We submit that such order is arbitrary and unreasonable and is not based on any facts and is contrary to all the facts.

We call the Court's attention to the citations under paragraph III.

V.

THE LOWER COURT IN DENYING THE APPLICATION FOR INJUNCTION AND ENTERING THE DECREE DISMISSING THE AMENDED BILL OF COMPLAINT AND THE CAUSE, HELD THAT THE SAID ORDER OF SAID STATE HIGHWAY COMMISSION WAS BASED SOLELY UPON EMERGENCY.

The opinion of the lower court recites that the order was made by reason of the emergency existing for the immediate repair of the said 22.11 miles in controversy. (P. R. p. 22, 23.)

An examination of the record in this cause shows that there is not one sentence in said record upon which the lower court could so act.

The record shows that the portion of said highway in controversy was in proper condition of mainten-

ance and repair, and also that there was no necessity for reducing such limit of combined weight of load and truck of 22,000. (P. R. p. 9, 10, 11, 12.)

Moreover, the appellants had offered to file good and sufficient bond in any amount the court would fix, in order to continue their operation of their trucks carrying the combined weight of truck and load and safeguard the State for any damage which might arise from the operation of said trucks with the additional combined weight fixed by said order, to-wit; 16,500. (P. R. p. 12.)

It is admitted that for the year 1925 the State Highway Commission was only compelled to expend $5,000.00 in the maintenance and repair of said portion of said highway. (P. R. p. 12.)

The silent witness of the record itself shows conclusively that the foundation upon which the lower court rendered its order and decree was contrary to the record.

The order was entered by the State Highway Commission on August 28th, 1925, and was to go into effect 32 days afterwards, namely on October 1st, 1925. (P. R. p. 17.)

After the filing of the original bill and after the decision of the lower court filed on January 11th, 1926, (P. R. p. 18,) based upon the allegations of such original complaint, the plaintiffs below filed the amended bill of complaint on January 25th, 1926. (P. R. p. 1.)

So that from October 1st, 1925, up to January 25th, 1926, when the amended bill of complaint was filed in which it is alleged that such highway was in perfect condition of maintenance and repair and in spite of the fact that all allegations of said amended bill

of complaint were admitted by the said motion to dismiss, the lower court on March 20th, 1926, (P. R. p. 25,) reiterated that the allegations of the amended bill of complaint showed an immediate necessity for repairing such 22.11 miles of such highway and therefore it was necessary for the State Highway Commission to enter said order of August 28th, 1925.

In the opinion of the lower court rendered upon the amended bill of complaint, it is said that the State has the power over the highways in the State and "it may enact and impose reasonable regulations governing the traffic over them, necessary to secure their preservation and maintenance, and the public safety." Further that there is no national legislation covering this subject.

In support of such assertions the court cited the case of Grand Trunk Western Ry. v. South Bend, 227 U. S. 644; Buck v. Kuykendall, 267 U. S. 307; Hendrick v. Maryland, 235 U. S. 610; Kane v. New Jersey, 242 U. S. 160. (P. R. p. 24.)

We call attention to this Court that the cases of G. T. W. Ry. v. South Bend, Hendrick v. Maryland and Kane v. New Jersey were determined and decided before the original "Post Road Act" of 1916 was enacted, therefore such decisions have no value in this present discussion. As to the case of Buck v. Kuykendall, we are at a loss to know how such case can be an authority against our position. In such case this Court sustained Buck in his attempts to have Section 4, of Chapter III, of the Laws of Washington 1921, and the acts of Kuykendall, Director of Public Utilities in said State declared void and unconstitutional upon certain grounds, one being the Federal legislation aiding States in the construction of rural post roads, another ground being that inter-

state commerce was burdened by such provisions of said law and the acts of Kuykendall.

We claim that the Buck case decides that the provisions of the "Federal Highway Act" divest the power of the State to legislate in violation of and contrary to said provisions which were adopted by the State by proper legislative act.

We submit that the order denying the application for temporary injunction and the decree dismissing the amended bill of complaint and the cause are erroneous, and that the same be reversed, and your Honorable Court enter such decree as may be proper, the premises considered.

Respectfully submitted,

W. R. CRAWFORD,
EDWIN C. EWING,

Solicitors for Appellants.